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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,293

03/12/2004

Ramon Tam

0212.69015

8247

7590 09/07/2007
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EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,293

Applicant(s)

TAM ET AL.

Examiner

Steven M. Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 5,6,8,9,12 and 24-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3292007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the fourth office action for U.S. Application 10/802,408 for a Collapsible Rolling Stand filed on March 12, 2004. Claims 1-28 are pending.

Claim Rejections - 35 USC § 102

Claims 1-4, 7, 10, 13, 18-23, 27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,087,013 to Gress et al. Gress et al. discloses a collapsible rolling stand with a front-end portion and a rear end portion. The stand can be manipulated between open and closed positions and has a top frame with a generally planar portion (20 or 24) configured to have an object secured thereto in a way such that the top planar portion is generally vertical when the stand is in the closed position and generally horizontal in an open position. There is a folding mechanism that supports the top frame with a handle (42) operatively connected to one end portion of a pair of spaced apart elongated first members (48a) that have opposite end portions defining contact points with the ground, and a pair of spaced apart second members (56) with wheels for enabling a user to roll the stand. The first and second members are pivotally connected to one another and configured such that the weight of an object provides a substantial portion of the necessary force needed to pivot the first and second pairs of members to further separate the forward contact point from the rear wheels and move the stand from the closed position to the open positions wherein the top frame planar portion is substantially horizontal. The first members are located on each side of the stand and are operatively connected to and pivotable relative to a rear

portion of the top frame planar portion. Each of the second members has a pivot connection (62) to one of the first members at a point intermediate the ends of the first member, each second member having one of the wheels connected to a rearward end portion thereof and an extension located forwardly of the pivot connection at a predetermined angle between 40 and 90 degrees relative to the lengthwise direction of the second member. There is a link member (72,74) pivotally attached to the distal end of the extension and to the top frame planar portion and a handle (42) connected to the planar portion. There is a locking mechanism (40) for releasably holding the stand in the closed position wherein actuating the locking mechanism enables the second member to pivot about the pivot connection causing the weight of the object to move the wheels a short distance away from the top frame planar portion, further movement of the stand in the rearward direction causing the second members and wheel to rotate toward the rear of the stand to the open position where the top frame planar portion is oriented in the substantially horizontal position.

The handle extends between and is connected to both first members and the cross member is positioned at an elevation below the top frame planar portion (at 44) and has a curved shape upwardly from the first members. The first members have a generally transverse extension (53) at the ground engaging opposite ends and at least one front end bridge (50) interconnecting the ends. The stand could support a circular saw and the top frame planar portion includes two side frame members (the sides) and two end frame members (the ends) interconnected in a generally planar rectangular configuration. There is at least one stop member (49) connected to each second

member for contacting the first member limiting the pivoting movement there between during the opening of the stand so that the top planar portion is held in the generally horizontal position. There is also a link member (26, 28) pivotally attached to the distal end of the rear leg extension and the frame portion, as well as main side struts (54, 56, 60), and the top frame includes an outwardly directed extension with a slot one each side thereof (at 74) for receiving an end of a link member. The first and second members are configured so that the weight of an object can provide a substantial portion of the necessary force needed to pivot the first and second pairs of members to move the stand from the open position to the closed position, wherein the top frame planar portion is in a generally vertical orientation.

Claims 1 and 14-16 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,927,745 to Cunningham. Cunningham discloses a collapsible support stand that can be used with an elongated normally horizontally oriented object attached thereto. The stand has a front and a rear end portion, and being capable of being manipulated between open and closed positions. The stand has a top frame (14 and 62) with a generally planar portion (the top or 62) configured to have an object secured thereto. The top frame planar portion is generally vertical when the stand is in its closed and generally vertical position. There is a folding mechanism (16) supporting the top frame and including at least one handle (58) operatively connected to one end portion of a pair of spaced apart elongated first members (64 and 86) that have opposite ends defining contact points with the ground and a pair of spaced apart second members (68 and 90) each having wheels (42) for enabling a user to roll the stand. The first and

second members are pivotally connected (at 66 and 88) to one another and configured so that the weight of the object provides a substantial portion of the necessary force needed to pivot the first and second pairs of members to further separate the forward contact point from the rear wheels and move the stand from the closed position to the open position, wherein the top planar portion is substantially horizontal. There is a spring (106 or 134) for biasing the stand toward its closed position when in its open position, such that an operator is not required to exert more than a small force to move the stand to its closed position. The spring is substantially unloaded when the stand is in its closed position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham. Cunningham does not specifically disclose the spring as having one end connected to the first and second members, but rather is only connected to one member. However, the spring is attached to a stationary object connected to the other member, and one of ordinary skill in the art at the time of the present invention would have known to alternate the location of the spring to an external location to provide easy access as a matter of design preference.

Allowable Subject Matter

Claim 11 is allowed. Claims 5, 6, 8, 9, and 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed June 22, 2007 have been fully considered but they are not persuasive. In response to applicant's arguments, the recitation "for use with an elongated normally horizontally oriented object attached thereto" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Also, in response to applicant's argument that the object is referred to in both elements of the claim and is instrumental in the functionality of the top frame and folding mechanism, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant argues that the weight and orientation of the object are important, but that the object is not specifically claimed because an infringer could sell the stand without a saw and not be a direct infringer. While this is true, Applicant can't decline to claim the object and then argue features of the object that isn't claimed. Gress and Cunningham both how stand that can support an object of a weight where it would provide a substantial portion of the necessary force needed to pivot the first and second pairs of members. Applicant also argues that Gress et al. does not show the object in a vertical orientation. First, it should be noted that in addition to failing to positively recite the object in the claim, Applicant doesn't claim the object as being vertically oriented, but rather that it is *generally* vertically oriented. That said, what are the object's vertical and horizontal orientations? The object extends in the both horizontal and vertical directions. Furthermore, assuming figure 2 shows the horizontal orientation, figure 4 shows a *generally* vertical arrangement.

Applicant argues that arguments to claim 27 were not addressed in the previous rejection and that the comments basically group all of the claims together. The reason for the grouping is that the argument is the same. Applicant is arguing that claim 27 claims the configuration is such that a user is not required to exert more than a small force to move the stand between its opened and closed positions due to the weight of the object. However, as pointed out previously, the object is not claimed. An object supported by the stand need only be capable of performing that function and it would.

Any object supported by the stand would inherently provide a substantial portion of the necessary force for moving it between open and closed positions due to gravity.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone


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number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

/SMM/

Steven M. Marsh

August 26, 2007



Carl D. Friedman
Supervisory Patent Examiner
Group 3600